



# Oregon Department of Justice

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## Division of Child Support

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## TESTIMONY ON SENATE BILL 821

### For the Senate Committee On Judiciary and Ballot Measure 110 Implementation

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#### Presented by:

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This testimony is presented in support of Senate Bill 821.

#### How This Bill Changes Current Law

Child support orders are set based on an ability to pay. Senate Bill 682 (2017), among other provisions, made important changes to the child support process when the parent who pays support is incarcerated. Senate Bill 821 makes some minor but helpful improvements to those processes.

Current ORS 25.247 creates a rebuttable presumption of an inability to pay child support if a parent who pays support is incarcerated for 180 days or longer, and it sets out a specific process and timeframe for rebutting the presumption prior to an order being suspended. However, there is no process for rebutting the presumption if an incarcerated parent's financial circumstances change while the order is suspended. Senate Bill 821 amends ORS 25.247 by adding a process to rebut the presumption of an inability to pay after an order is suspended due to a parent's incarceration. This approach mirrors the objection process before an order is suspended and requires the court or administrative law judge to decide whether the presumption of inability to pay is rebutted if an incarcerated parent's circumstances change after an order is suspended.

In addition, Senate Bill 821 removes subsections ORS 25.247(9) and 25.527(11), which provide that incarceration for 180 consecutive days or release from incarceration qualifies for a change of circumstance modification. These provisions were intended to provide statutory authority for the administrator of the Title IV-D (child support) program to complete the modification set out in ORS 24.247(8). New language is added to ORS 25.247(8) to better achieve this purpose. The current criterion allows additional requests for modifications when the parent who pays support is incarcerated for 180 days or released from incarceration, regardless of their financial circumstances or whether the order was suspended. When there is an ability to pay while the

parent is incarcerated, regardless of whether the order is suspended, a change in circumstances modification request should illustrate the underlying financial change. Further, release from incarceration, on its own, should not rebut an inability to pay during the 120 days after release; rather, a significant change in the paying parent's financial resources must be demonstrated in order to rebut the presumption prior to an order being reinstated.

Finally, Senate Bill 821 amends ORS 25.287, which ordinarily requires modification of certain child support orders every three years regardless of whether circumstances have changed. This requirement should not apply when an order is suspended because the suspension is based on a paying parent's inability to pay. The modification would result in a \$0 order, which would circumvent the suspension processes.

### **Key Points of Legislation**

- Creates a process to rebut the presumption of an inability to pay after an order is suspended due to the incarceration of a parent who pays support. Requires the court or administrative law judge to decide whether the presumption of the parent's inability to pay is rebutted. If the presumption is rebutted, the order will be reinstated at 50% of the previously ordered support amount. Within 60 days of reinstatement, the Oregon Child Support Program would be required to review the order for purposes of modifying the order.
- Amends ORS 25.247 by deleting subsection (9) and adding new language under subsection (8) to include reinstatement of a support order under this section as a new change of circumstance reason. ORS 25.527(11) to conform with amendments to ORS 25.247.
- Amends ORS 25.287(1)(g) to delay any modification proceedings under this section while an order is suspended under ORS 25.245 or 25.247 until after the order is reinstated.

### **Fiscal Impact**

This legislation may result in additional administrative hearings handled by the Office of Administrative Hearings.

### **Recommended Action**

The Oregon Department of Justice recommends committee approval of Senate Bill 821 because it perfects the intent of the original legislation (SB 682, 2017), enabling the reinstatement and modification of support obligations when an incarcerated parent's financial circumstances change, but preventing modifications that circumvent the suspension and reinstatement process under ORS 25.247.